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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

JIM IRVIN

Commissioner-Chairman

TONY WEST

Commissioner

CARL J. KUNASEK

Commissioner

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IN THE MATTER OF PLAN TO IMPLEMENT
TOLL CARRIER PRESUBSCRIPTION
SYSTEM BASED ON STATE RATHER
THAN LATA BOUNDARIES.

DOCKET NO. RT-00000J-99-0095

RESPONSE OF COMMISSION STAFF TO U S WEST'S PETITION FOR ORDER
CONCERNING TOLL CARRIER PRESUBSCRIPTION PLAN

I. INTRODUCTION

On February, 16, 1999, U S WEST Communications, Inc. ("U S WEST") filed a Petition for Order Concerning Toll Carrier Presubscription Plan in which it asked the Commission to find that U S WEST's provision of interLATA long distance service in Arizona is in the public interest. U S WEST also asked the Commission to establish a rulemaking procedure to adopt a toll carrier presubscription system based on State borders rather than Local Access and Transport Areas ("LATAs"), to be effective immediately upon U S WEST obtaining the ability to offer in-state interLATA long distance services in Arizona.

Commission Staff supports the U S WEST Petition to the extent it requests that a proceeding be commenced at this time for the purpose of examining issues likely to arise from elimination of the LATA boundaries in Arizona, including the need for a new presubscription process based upon State boundaries, once U S WEST receives Section 271 authorization from the FCC. Staff believes an examination of these issues at this time would provide for a more orderly transition in the event U S WEST obtains Section 271 authority from the FCC.

II. BACKGROUND

A. MFJ and 1996 Act

Since 1984, Arizona has been divided into four LATAs which were established as part of the AT&T Divestiture as a means of implementing one of several lines of business

1 restrictions imposed on the Bell Operating Companies ("BOCs") by the Modified Final
2 Judgement ("MFJ"). Under the MFJ, the BOCS, including U S WEST, were allowed to carry
3 toll calls between points within each LATA, but were prohibited from carrying toll calls across
4 the LATA boundaries. The MFJ was subsequently superseded by the Telecommunications Act
5 of 1996 ("1996 Act"), which took effect in February, 1996.

6 Under Section 271 of the 1996 Act, U S WEST may proceed under one of two
7 tracks to meet the terms and conditions of a 14-point competitive checklist to obtain entry into
8 the interLATA long distance market. In addition, the FCC which acts as the ultimate decision-
9 maker in all Section 271 cases, must find that U S WEST's entry into the interLATA market will
10 serve the public interest. Under the 1996 Act, the relevant State commission is to provide
11 consultation to the FCC on whether the BOC has met the requirements of Section 271, given
12 conditions within that particular State.

13 **B. Related Proceedings**

14 On May 27, 1997, the Commission issued a Procedural Order in Docket No.
15 T-00000B-97-238 establishing procedures to govern U S WEST's Section 271 application in
16 Arizona. In accordance with that Procedural Order, U S WEST, on February 8, 1999, filed with
17 the Commission its Notice of Intent to File With the FCC for Section 271 Authority. On March
18 2, 1999, the Commission issued a Procedural Order finding that U S WEST's Section 271 filing
19 was incomplete. The ACC's May 27, 1997 Procedural Order required U S WEST to file all of
20 the information in support of its Section 271 application at least 90 days before it intends to file
21 with the FCC. The March 2, 1999 Order gave the Company until April 12, 1999 to supplement
22 its Notice with all of the information required under the Commission's May 27, 1997 Procedural
23 Order. U S WEST filed its supplement on March 25, 1999.

24 **C. The U S WEST Petition for a New Toll Carrier Presubscription Plan**

25 Arizona currently has a 2-PIC toll carrier presubscription plan based on LATA
26 boundaries. Under U S WEST's proposal, Arizona's 2-PIC presubscription plan would be based
27 on State boundaries. In support of the instant Petition for a new toll carrier presubscription plan
28 in Arizona, U S WEST states that there is no rational basis for continuing to ascribe regulatory

1 significance to LATA boundaries once U S WEST is allowed to offer in-state interLATA long
2 distance service. U S WEST further argues that while the FCC established a 2-PIC system as the
3 nationwide minimum standard, the FCC expressly authorized States to structure 2-PIC systems
4 based on State borders rather than LATAs. U S WEST Petition at p. 4. U S WEST states that
5 once it receives authorization to carry calls across LATA boundaries, the LATA boundaries will
6 simply become a relic from an abandoned regulatory regime and will serve no useful purpose.
7 Finally, U S WEST argues that the public interest supports this result since "[a]dditional
8 simplicity and increased competition in the long distance industry would produce a panoply of
9 public benefits to residential and businesses consumers, including access to one-stop shopping
10 for an array of telecommunications services and lower long distance prices." U S WEST Petition
11 at p. 2.

12 U S WEST urges the Commission to proceed to examine this issue at this time so
13 that the new presubscription system can be immediately instituted if interLATA relief in Arizona
14 is obtained. U S WEST also asks the Commission to require carriers to submit implementation
15 plans demonstrating readiness to shift to a State-based presubscription system on short notice.
16 U S WEST Petition at pp. 8-9.

17 **III. DISCUSSION**

18 Staff supports U S WEST's Petition to the extent it is requesting that a proceeding
19 be commenced to examine issues relating to elimination of the LATA boundaries in the event it
20 receives Section 271 authority in Arizona. Staff believes the Petition raises legitimate issues in
21 need of resolution once U S WEST obtains Section 271 authority from the FCC. For instance, if
22 the FCC ultimately finds that U S WEST meets all Section 271 requirements and allows U S
23 WEST entry into the interLATA long distance market, then Staff agrees that there will be a need
24 to examine whether changes to Arizona's toll presubscription plan or other changes to address
25 the potential ramifications stemming from elimination of the LATA boundaries, would be
26 appropriate or desirable.

27 Staff supports commencing a proceeding at this time to begin this examination
28 process, the results of which would become effective when U S WEST obtains Section 271

1 authority from the FCC. U S WEST's complete application in Docket No. T-00000B-97-0238
2 was filed on March 25, 1999, beginning the Section 271 process before this Commission. While
3 the proceeding before this Commission is likely to take at least another 90 days, the complete
4 process, including FCC review, is likely to conclude in the last quarter of this year since the
5 FCC is required under the 1996 Act to make its findings within 90 days. Thus, an examination
6 of these issues at this time would allow for a more smooth transition if U S WEST obtains
7 Section 271 authority from the FCC.

8 While AT&T argues that the Section 272 separate affiliate requirement¹ will
9 cause the LATA boundaries to remain an important element of Federal law for a significant
10 period following approval of a BOC's Section 271 application in a particular State, Staff does
11 not believe that it necessarily follows that the LATA boundaries remain relevant or appropriate
12 for all other purposes, such as those raised in the U S WEST Petition.

13 Finally, Staff opposes the Petition to the extent it could be interpreted as
14 requesting an immediate determination by the Commission, outside the Section 271 process, that
15 U S WEST's provision of interLATA long distance service is in the public interest. To the
16 extent U S WEST seeks such a public interest determination at this time, it is premature since
17 this is a component of the Section 271 proceeding now pending before the Commission in
18 Docket No. T-00000B-97-238.² In addition, the FCC in a 1997 Declaratory Order ruled that the
19 States had no authority to redefine LATA boundaries, in response to a similar request by U S
20 WEST in Arizona and Minnesota.³

21 IV. CONCLUSION.

22 Staff recommends that the Commission grant the U S WEST Petition to the extent
23 that it requests the commencement of a proceeding at this time to examine modifying the
24 existing presubscription system, effective upon U S WEST's obtaining Section 271 authority

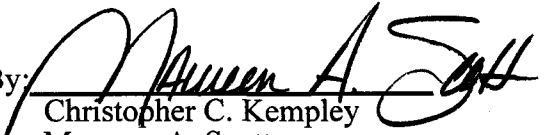
25 ¹ Under Section 272 of the 1996 Act, a BOC must carry interLATA traffic
26 originating in its region through a separate subsidiary for at least three years after it receives
Section 271 authority.

27 ² Accord AT&T March 11, 1999 Letter to Chairman James M. Irvin.

28 ³ See *In the Matter of Petition for Declaratory Ruling Regarding U S WEST
Petitions to Consolidate LATAs in Minnesota and Arizona*, Docket No. NSD-L-97-6, released
April 21, 1997.

1
2 from the FCC. Staff believes an examination of these issues at this time would provide for a
3 more orderly transition in the event U S WEST obtains Section 271 authority from the FCC.

4 RESPECTFULLY SUBMITTED this 30th day of March, 1999
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6
7 By: 
8 Christopher C. Kempley
9 Maureen A. Scott
10 Attorneys, Legal Division
11 Arizona Corporation Commission
12 1200 West Washington
13 Phoenix, Arizona 85007
14 (602) 542-3402
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Original and ten copies
2 filed this 30th day of March,
1999 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 Copies of the foregoing
8 mailed this 3/5 day of
9 March, 1999 to:

10 Timothy Berg
11 Fennemore Craig
12 3003 N. Central Ave., Suite 2600
13 Phoenix, Arizona 85016
14 Attorneys for U S WEST Communications, Inc.

15 Thomas Dethlefs
16 U S West Communications, Inc.
17 1801 California Street, #5100
18 Denver, Colorado 80202

19 Donald A. Low
20 Sprint Communications Co L.P.
21 8140 Ward Parkway SE
22 Kansas City, Missouri 64114

23 Joan Burke
24 Osborn Maledon
25 2929 North Central Avenue, 21st Floor
26 Phoenix, Arizona 85067-6379
27 Attorneys for AT&T Communications

28 Ms. Patricia L. vanMidde
Assistant Vice President, Government Affairs
AT&T Communications of the
Mountain States
2800 North Central Avenue, Ste 828
Phoenix, Arizona 85004

Thomas F. Dixon
MCI Telecommunications Corp
707 17th Street, #3900
Denver, Colorado 80202

Steven J. Duffy
Ridge & Isaacson, P.C.
3101 North Central Avenue, Ste 432
Phoenix, Arizona 85012
Attorneys for Sprint Communications

By 